

REMARKS

Reconsideration and withdrawal of the examiner's rejections under 35 USC §§ 112 and 103(a), is respectfully requested in view of the above amendments and the following remarks. The applicant would like to thank the examiner for his time and kind cooperation in this matter.

Objections

Claim 1 stands objected to for having improper identifiers listed. In response, claim 1 has been amended according to the examiner's kind suggestion.

35 USC § 112

Claims 1-6, 9 and 11-17 stand rejected under 35 U.S.C. 112, first paragraph, because the specification assertedly does not reasonably provide enablement for any and all compositions according to the claim limitations.

In response, applicants have further amended independent claim 1 require the presence of two components that can react with each other, to restrict the stabilizer specifically to an organophilic particle and to further recite that the reaction occurs during cleansing and skin treatment. The skilled person would understand that such reaction occurs under the ambient conditions a user of the inventive cleansing skin care or composition would normally experience in the course of using the composition in washing their body, face, hair and/or hands, etc., with the article in the shower or by the sink. Support for this amendment is found in the instant specification on page 2, line 18-24. Substantial reaction is defined in the instant specification on page 7, lines 28 to 30.

Furthermore, applicants respectfully reiterate that the skilled person would know the identity of chemical combinations meeting the specific claimed reaction criteria. Nonlimiting examples of selected reactive chemical combinations are described on page 12, lines 18 to page 13, line 8. It is therefore respectfully submitted that amended claim 1 is in compliance with 35 U.S.C. § 112 first paragraph as illustrated in MPEP 2164.05(b).

Moreover, it is well settled that it is not a requirement to provide an example of every embodiment of the invention encompassed by the claims. In this regard, Applicants have described the invention generically and have provided a description of particular examples of the invention. The particular examples themselves provide for the requisite enablement of the invention, especially commensurate with amended claim 1.

It is again noted that broad claims can properly be supported by the disclosure of a single species. *In re Cook* and *Merigold*, 169 USPQ 298 (CCPA 1971). Moreover, in *In re Angstadt* and *Griffen*, 190 USPQ 214, 218 (CCPA 1976), it became well settled that an Applicant does not have to disclose every species covered by a claim. In fact, the Court held that:

“To require such a complete disclosure would apparently necessitate a patent application or applications with “thousands” of examples ... [and] more importantly, such a requirement would force an inventor seeking adequate patent protection to carry out a prohibitive number of actual experiments. This would tend to discourage inventors from filing a patent application in an unpredictable area since the claims would have to be limited to those embodiments which are expressly disclosed.”

In view of the above, and Applicants' amendment which further limit the scope of the composition and its reactivity, Applicants respectfully submit that the rejection of the claims under 35 USC § 112, paragraph 1, be withdrawn.

35 USC 103(a)

Claims 1-6, 9-11 and 13-17 stand rejected under 35 USC § 103(a) as being unpatentable over Beerse, et al., (US Patent 6,294,186).

Beerse, et al., relates to an antimicrobial composition comprising a benzoic acid analog and a dermatologically acceptable carrier for the benzoic acid analog when complexed with metal wherein the composition has a pH of about 1-7 and is substantially free of a specific

organic acid. Applicants respectfully submit that a proper prima facie case under § 103 is not been made out with respect to Beerse, et al., because Beerse at least does not disclose a composition where at least two different components of the dispersed phase can react with each other when blended with water according to presently amended claim 1 among other reasons.

Claims 1-6, 9 and 11-17 stand rejected under 103(a) as being unpatentable over Leyland (GB 2,242,358) in view of Diec, et al., (US Patent 6,607,733). Applicants respectfully traverse this rejection.

Leyland, et al., discloses a cosmetic formulation comprising separate water and oil emulsion and carrier phases discussed in detail applicant's prior response. In addition to the arguments of record, it is respectfully submitted that a proper prima facie case under § 103(a) is not made out with respect to Leyland, et al., and presently amended claim 1 because Leyland, et al., does not disclose two components dispersed in the same phase that can react with each other when dispersed or dissolved in water and where that phase is stabilized by organophilic particles.

In reference to Example 15 of Leyland, the examiner continues to assert that sodium lauryl ether sulphate is a compound capable of reasonably generating sulfide ions when reacted with an alkaline material and water; that chlorhexidene gluconate is a compound reasonably capable of generating a peroxide compound; that formaldehyde is a compound reasonably capable of producing a gas in aqueous solution when reacted with an acid, e.g., citric acid. In response, applicants respectfully reiterate that the examiner has not met his burden to establish a proper prima facie case under § 103 by offering facts describing how such reactions would be expected by the skilled person under conditions of cleansing or skin treatment by a user as opposed to bare assertions that they would reasonably occur. Furthermore, it is respectfully submitted that the skilled person would understand that such reactions do not occur under the claimed conditions.

Diec, et al., (US Patent 6,607,733) relates to microemulsion gels based on a microemulsion of the oil and water type in which droplets of the discontinuous oily phase are joined to one another by one or more crosslinking substances and where the molecules are distinguished by at least one hydrophilic region and by at least one hydrophobic region. In

addition to the arguments of record, applicants respectfully submit that Diec, et al., fails to remedy the deficiencies of Leyland, et al., with respect to setting out a proper prima facie case under § 103(a) for the presently amended claims.

Other References Showing the General State of the Art

Applicants have reviewed the following references offered by the examiner to show the general state of the prior art and the examiners interpretation thereof. Remington's (Remington's Pharmaceutical Sciences. 16th ed. (1980); Ha, et al. (US Patent 5,997,887); SaNogueira, Jr., et al. (US Patent 6,174,533); Unger, et al. (US Patent 6,403,065); Robinson, et al. (US Patent 6,492,326); Naser, et al. (US Patent 6,290,943; already made of record by applicant); Oblong, et al. (US Patent 5,939,082); and Patel, et al. (US Patent 6,248,363). Applicant's respectfully submit that neither reference alone or in combination with each other or the other art of record anticipates or renders obvious the instant claims as currently amended.

CONCLUSION

In summary, claims 1, 3 and 5 have been amended and claims 2 and 17 have been cancelled. No new matter has been added.

The examiner is invited to contact the undersigned if there are any questions concerning the case.

Respectfully submitted,



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